

NO. CV15-6016722 S

SUPERIOR COURT

SCARLETT LEWIS, ADMINISTRATRIX OF
THE ESTATE OF JESSE LEWIS, ET AL.

JUDICIAL DISTRICT

V.

OF DANBURY

THE TOWN OF NEWTOWN, ET AL.

AUGUST 3, 2016

MEMORANDUM OF DECISION
RE: MOTION TO APPEAR AS AMICUS CURIAE (#147)

The movant, William Brandon Shanley, has filed a motion to appear as amicus curiae (#147)¹ relative to the plaintiffs' complaint which generally alleges that the defendants Town of Newtown and Sandy Hook Board of Education failed to provide adequate security to students and staff relative to the December, 2012 shootings at Sandy Hook elementary school in Newtown, Connecticut. The basis of the motion is that there exists "an overwhelming amount of physical and documentary evidence compiled by scholars, independent investigators and media analysts proving beyond a reasonable doubt that the 'Sandy Hook Massacre' of December 14, 2012 was in fact a Federal Emergency Management 'single shooter mass casualty drill' conducted December 13-14, 2012 at Sandy Hook Elementary School, a school that was closed in 2008 for biohazards and failure to meet ADA requirements." He contends that by providing to the court specifically referenced evidence and information it would assist in ensuring that "Truth and Justice would prevail in this case."

Oral argument was held on the motion on August 1, 2016. At that argument, the plaintiffs and defendants had no dispute as to the underlying allegations that a lone gunman entered the school on December 14, 2012 killing a number of students and staff. The movant

¹ Although referred to in the court's electronic file as a motion to appear as amicus curiae, the actual motion is entitled "motion to file amicus curiae brief."

CH. Papery Janosov Reche
Ryan Ryan DeLucia
Cohen & Wolf
W. Shanley 8/3/16 RJR

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acknowledged that it was within the court's discretion whether to allow an amicus curiae brief to be filed in this matter.

As our Supreme Court noted in *State v. Ross*, 272 Conn. 577, 611-12, 863 A.2d 654 (2005), “[t]he [a]pppearance of an amicus curiae is generally authorized by the court's grant of an application for the privilege of appearing as amicus curiae and not as of right. Accordingly, the fact, extent and manner of an amicus curiae's participation is entirely within the court's discretion and an amicus curiae may ordinarily be heard only by leave of the court.” (Internal quotation marks omitted.)

“Historically, amicus curiae was defined as one who interposes in a judicial proceeding to assist the court by giving information, or otherwise, or who conduct[s] an investigation or other proceeding on request or appointment therefor by the court. . . . Its purpose was to provide impartial information on matters of law about which there was doubt, especially in matters of public interest. . . . The orthodox view of amicus curiae was, and is, that of an impartial friend of the court—not an adversary party in interest in the litigation. . . . The position of classical amicus in litigation was not to provide a highly partisan account of the facts, but rather to aid the court in resolving doubtful issues of law. . . . Amicus . . . has never been recognized, elevated to, or accorded the full litigating status of a named party or a real party in interest . . . and amicus has been consistently precluded from initiating legal proceedings, filing pleadings, or otherwise participating and assuming control of the controversy in a totally adversarial fashion. . . . Historically, an amicus could not join issues not joined by the parties in interest” (Citations omitted; emphasis omitted; internal quotation marks omitted.) *State v. Ross*, supra, 272 Conn. 612.

The movant in this case has not cited any legal authority to support his request to appear as amicus curiae and file a brief, particularly given that the parties to the action “have taken nonadversarial positions on an issue on which the person seeking to be admitted as an amicus curiae takes an opposing view. The foregoing principles make it clear that the court has no obligation to do so. It is also clear that the [movant] is attempting to use the procedure for becoming an amicus curiae as a vehicle for evading the procedures for formally intervening in the underlying [case]. Amicus status should not be granted for such a purpose.” *State v. Ross*, supra, 272 Conn. 612-13.

“An examination of existing rules of practice also supports the conclusion that the rules, as a whole, do not permit the filing of an amicus curiae brief without court permission. Practice Book § 5-1 provides that ‘[t]he *parties may, as of right*, or shall, if the judicial authority so orders, file, at such time as the judicial authority shall determine, written trial briefs discussing the issues in the case and the factual or legal basis upon which they ought to be resolved.’ (Emphasis added.) By expressly providing the parties with the *right* to file written briefs, it is clear that the rules of practice do not provide such a right to nonparties, including potential amicus curiae.” (Emphasis in original.) *Thalheim v. Greenwich*, 256 Conn. 628, 645, 775 A.2d 947 (2001).

Having considered the movant’s motion and argument, the court finds that the information proposed for submission is neither useful or otherwise necessary to the resolution of the issues pending in this matter. The court has neither requested the input of an amicus curiae brief nor appointed the movant to file one as there is no controversy between the parties relative to the issue the movant seeks to address. Here, the movant’s purpose appears to be more to intervene as a party and contest the evidence in an adversarial manner rather than act as a friend

of the court. The information sought to be put before the court would not assist in the resolution of any matters of law in this case of which there is doubt. Accordingly, the motion is denied.

BY THE COURT

A handwritten signature in black ink, appearing to be 'A. M.', written over a horizontal line.

Shaban, J.